

AMENDED IN SENATE APRIL 2, 2003
AMENDED IN SENATE MARCH 18, 2003

SENATE BILL

No. 103

Introduced by Senator Alpert

January 29, 2003

An act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Alpert. Sales and use taxes.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law imposes the sales tax upon “retailers,” and defines a “retailer engaged in business in this state” to include specified entities. Existing law provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser.

This bill would clarify that a retailer is engaged in business in this state if a retailer authorizes an employee, representative, or independent contractor operating in this state for the purpose of servicing or repairing tangible personal property.

This bill would clarify that the processing of orders electronically, by fax, telephone, the Internet, or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is engaged in business in this state.

This bill would also clarify that a retailer is ~~presumed to have an agent within the~~ *engaged in business in this* state if the retailer is related, as specified, to a retailer maintaining sales locations in this state, provided the retailer sells similar products under a similar name as the California retailer, or facilities or employees of the related California retailer are used to advertise or promote sales by the retailer to California purchasers.

This bill would state the intent of the Legislature in enacting the bill and would specify that the provisions are intended to prospectively clarify existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6203 of the Revenue and Taxation Code
2 is amended to read:

3 6203. (a) Except as provided by Sections 6292 and 6293,
4 every retailer engaged in business in this state and making sales of
5 tangible personal property for storage, use, or other consumption
6 in this state, not exempted under Chapter 3.5 (commencing with
7 Section 6271) or Chapter 4 (commencing with Section 6351),
8 shall, at the time of making the sales or, if the storage, use, or other
9 consumption of the tangible personal property is not then taxable
10 hereunder, at the time the storage, use, or other consumption
11 becomes taxable, collect the tax from the purchaser and give to the
12 purchaser a receipt therefor in the manner and form prescribed by
13 the board.

14 (b) As respects leases constituting sales of tangible personal
15 property, the tax shall be collected from the lessee at the time
16 amounts are paid by the lessee under the lease.

17 (c) “Retailer engaged in business in this state” as used in this
18 section and Section 6202 means and includes any of the following:

19 (1) Any retailer maintaining, occupying, or using, permanently
20 or temporarily, directly or indirectly, or through a subsidiary, or
21 agent, by whatever name called, an office, place of distribution,
22 sales or sample room or place, warehouse or storage place, or other
23 place of business.

24 (2) Any retailer having any representative, agent, salesperson,
25 canvasser, independent contractor, or solicitor operating in this

1 state under the authority of the retailer or its subsidiary for the
2 purpose of selling, delivering, installing, assembling, servicing,
3 repairing, or the taking of orders for any tangible personal
4 property.

5 (3) As respects a lease, any retailer deriving rentals from a lease
6 of tangible personal property situated in this state.

7 (4) (A) Any retailer soliciting orders for tangible personal
8 property by mail if the solicitations are substantial and recurring
9 and if the retailer benefits from any banking, financing, debt
10 collection, telecommunication, or marketing activities occurring
11 in this state or benefits from the location in this state of authorized
12 installation, servicing, or repair facilities.

13 (B) This paragraph shall become operative upon the enactment
14 of any congressional act that authorizes states to compel the
15 collection of state sales and use taxes by out-of-state retailers.

16 (5) Notwithstanding Section 7262, a retailer specified in
17 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
18 above, is a “retailer engaged in business in this state” for the
19 purposes of this part and Part 1.5 (commencing with Section 7200)
20 only.

21 (d) (1) For purposes of this section, “engaged in business in
22 this state” does not include the taking of orders from customers in
23 this state through a computer telecommunications network located
24 in this state that is not directly or indirectly owned by the retailer
25 when the orders result from the electronic display of products on
26 that same network. The exclusion provided by this subdivision
27 shall apply only to a computer telecommunications network that
28 consists substantially of online communications services other
29 than the displaying and taking of orders for products.

30 (2) This subdivision shall become inoperative upon the
31 operative date of provisions of a congressional act that authorize
32 states to compel the collection of state sales and use taxes by
33 out-of-state retailers.

34 (e) Except as provided in this subdivision, a retailer is not a
35 “retailer engaged in business in this state” under paragraph (2) of
36 subdivision (c) if that retailer’s sole physical presence in this state
37 is to engage in convention and trade show activities as described
38 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
39 retailer, including any of his or her representatives, agents,
40 salespersons, canvassers, independent contractors, or solicitors,

1 does not engage in those convention and trade show activities for
2 more than 15 days, in whole or in part, in this state during any
3 12-month period and did not derive more than one hundred
4 thousand dollars (\$100,000) of net income from those activities in
5 this state during the prior calendar year. Notwithstanding the
6 preceding sentence, a retailer engaging in convention and trade
7 show activities, as described in Section 513(d)(3)(A) of the
8 Internal Revenue Code, is a “retailer engaged in business in this
9 state,” and is liable for collection of the applicable use tax, with
10 respect to any sale of tangible personal property occurring at the
11 convention and trade show activities and with respect to any sale
12 of tangible personal property made pursuant to an order taken at
13 or during those convention and trade show activities.

14 (f) Any limitations created by this section upon the definition
15 of “retailer engaged in business in this state” shall only apply for
16 purposes of tax liability under this code. Nothing in this section is
17 intended to affect or limit, in any way, civil liability or jurisdiction
18 under Section 410.10 of the Code of Civil Procedure.

19 (g) (1) The processing of orders electronically, by fax,
20 telephone, the Internet, or other electronic ordering process, does
21 not relieve a retailer of responsibility for collection of the tax from
22 the purchaser if the retailer is engaged in business in this state
23 pursuant to this section.

24 (2) For purposes of this section, a retailer is ~~presumed to be~~
25 ~~doing~~ engaged in business in this state, as defined in paragraphs
26 (1) and (2) of subdivision (c), if both of the following conditions
27 exist:

28 (A) The retailer holds a substantial ownership interest, directly
29 or through a subsidiary, in a retailer maintaining sales locations in
30 California or is owned in whole or in substantial part by that
31 retailer, or by a parent or subsidiary thereof. For purposes of this
32 subparagraph, “substantial ownership interest” in an entity means
33 that degree of ownership of equity interests in an entity that is not
34 less than that degree of ownership as specified by Section 78p of
35 Title 15 of the United States Code, or any successor to that statute,
36 with respect to a person other than a director or officer.

37 (B) The retailer sells the same or substantially similar line of
38 products as the retailer maintaining sales locations in California
39 under the same or substantially similar business name, or facilities



1 or employees of the related retailer located in this state are used to
2 advertise or promote sales by the retailer to California purchasers.

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) The amendment to Section 6203 of the Revenue and
6 Taxation Code by this act is intended to prospectively clarify
7 existing law.

8 (b) This amendment is necessary in order to prospectively
9 clarify that a retailer that is engaged in business in the state cannot
10 be relieved of the nexus created by its location in the state through
11 use of an affiliate, subsidiary, or related company, the purpose of
12 which is to engage in similar transactions through the processing
13 of orders by electronic means.

14 (c) In amending Section 6203 of the Revenue and Taxation
15 Code in this act, it is not the intent of the Legislature to, in any way,
16 extend or broaden the definition of retailer engaged in business in
17 the state, but solely to prospectively clarify the definition for use
18 by all retailers. Also, it is not the intent of the Legislature in
19 amending Section 6203 of the Revenue and Taxation Code in this
20 act to affect, in any way, any investigation, audit, or other
21 enforcement action by the State Board of Equalization that has
22 been initiated prior to January 1, 2004.

23 (d) In defining the term “substantial ownership interest” on the
24 basis of standards set forth in federal law, it is the intent of the
25 Legislature to incorporate those longstanding parameters of
26 federal securities law that identify those principal stockholders of
27 a legal entity that may fairly be equated with persons exerting a
28 substantial influence over that entity.

29 (e) Pursuant to Section 3.5 of Article III of the California
30 Constitution, the Legislature hereby directs the State Board of
31 Equalization to fully enforce this act.

